

# **Outline of Statutory Changes to Implement Reform of Marion County Small Claims Court System**

## **I. Introduction**

To address the significant criticisms and controversies associated with the system of Marion County township small claims courts, to better provide for fair and impartial justice, and to strengthen the public's confidence in Marion County's management of small claims matters, the following plan for comprehensive legislative action is presented that would: (1) abolish the current Marion County township small claims courts; and (2) grant the Marion Superior Court jurisdiction over small claims cases. These reforms will ensure that Marion County's small claims litigants have the same access to justice as litigants in Indiana's 91 other counties. This proposal takes into consideration the July 2013 Final Report from the National Center for State Courts, and Seventh Circuit's opinion in *Suesz v. Med-I Solutions, LLC*, No. 13-1821, 2014 WL 2964771 (7th Cir. July 2, 2014).

## **II. Abolishing the Marion County Township Small Claims Courts**

Indiana Code Title 33, Article 34, consists of sixty statutes and governs the Marion County township small claims courts, including judges' pay and responsibilities, judges' powers, facilities and personnel, constables, records management, and fees. Article 34 also grants the Marion Circuit Court the power to supervise the township courts. *See, e.g.*, Ind. Code § 33-34-1-5 (2004) (circuit court judge "shall extend aid and assistance" to the township courts); Ind. Code § 33-34-3-6 (circuit court judge shall adopt rules governing the courts).

Article 34 is limited in scope to the Marion County township small claims courts. Repealing that article in its entirety will abolish those courts, including the offices of small claims court judge and small claims court constable. Expiration of terms of office

for the township small claims judges should be coordinated with the establishment of new small claims judges in the Marion Superior Court.

In addition, several other statutes that address Marion County's township courts must be amended or repealed as follows:

<b><u>Statute</u></b>	<b><u>Action Needed</u></b>	<b><u>Reason</u></b>
3-10-1-19 (2014)	Amend	Refers to a "township" small claims court judge and a small claims court constable
3-11-2-12 (2014)	Amend	Refers to a "township" small claims court judge and a small claims court constable
5-8-3.5-1 (2004)	Amend	Refers to a "township small claims court"
33-28-1-2 (2011)	Amend	Establishes Marion Circuit Court's de novo review of decisions by "township small claims courts established under IC 33-34"
33-29-1-1.5 (2011)	Amend	Establishes Marion Superior Court's de novo review of decisions by "township small claims courts established under IC 33-34"
33-29-1.5-2 (2011)	Amend	Also establishes Marion Superior Court's de novo review of decisions by "township small claims courts established under IC 33-34"
33-31-1-9 (2011)	Amend	Establishes Marion Probate Court's de novo review of decisions by "township small claims courts established under IC 33-34"
33-37-4-4 (2013)	Amend	Refers to small claims courts operating under "IC

<b><u>Statute</u></b>	<b><u>Action Needed</u></b>	<b><u>Reason</u></b>
		33-34”
33-37-5-21.2 (2011)	Amend	Refers to “a court described in IC 33-34”
33-37-5-26 (2008)	Amend	Refers to a court described in “IC 33-34”
33-37-5-27 (2008)	Amend	Refers to “a court described in IC 33-34”
33-37-5-31 (2012)	Amend	Refers to “a township docket fee” under IC 33-34
33-37-7-2 (2013)	Amend	Refers to fees collected in a court “described in IC 33-34”
33-41-1-7 (2004)	Repeal	Discusses court reporters who work in the courts “established under 33-34”

### III. Establishing Small Claims Jurisdiction in the Marion Superior Court

In general, Indiana Code Title 33, Article 29 governs “Standard Superior Courts,” including small claims divisions of such courts, throughout the state. However, the Marion County Superior Court is explicitly exempt from Article 29. *See* Ind. Code § 33-33-49-1 (2004). Instead, Indiana Code 33-33-49 governs the Marion County Superior Court, and it is within Chapter 49 that amendments and additions must be made to grant small claims jurisdiction to that court.

#### A. Establishing the Courts

A new section must be added to Chapter 49 stating, “The Marion superior court has a small claims division.” This is based on statutory language used to establish small claims divisions or dockets in other counties. *See, e.g.*, Ind. Code § 33-33-60-2 (2013) (Owen County); 33-33-83-1 (2004) (Vermillion County).

The new section should further state, “The small claims division is subject to Indiana Code 33-29-2.” That chapter governs small claims matters in standard superior courts, and subjecting Marion County’s new small claims division to its provisions ensures that the new division will operate like small claims courts in other counties.

Next, Indiana Code section 33-33-49-14 (2007) states that the Marion Superior Court shall, by rule, “divide the work of the court into various divisions.” These divisions must include, but are not limited to, “Civil,” “Criminal,” “Probate,” and “Juvenile.” *Id.* The statute should be amended to add “Small Claims” as a fifth division.

These changes will establish the Marion Superior Court’s jurisdiction over small claims.

#### B. Adding More Judges, Clerks, and Hearing Officers

Indiana Code section 33-33-49-6 (2006) establishes the number of judges of the Marion Superior Court. It is currently set at thirty-six (36). We recommend amending the statute to add eight (8) more judges.

According to Indiana Code section 33-33-49-14(e) (2007), judges are assigned among the various divisions according to the Marion County Superior Court’s internal rules. Thus, the judges will retain the power to allocate themselves among the divisions, including small claims, as they see fit.

We recommend January 1, 2016 as the effective date for the new judges to allow the General Assembly to enact the necessary statutory changes, to allow for elections, and enable a transition from the township courts.

On a related note, Indiana Code section 33-33-49-13 (2006) regulates the election of Marion Superior Court judges. The number of candidates for judicial office must be adjusted to account for the eight new judges.

The superior court judges' executive committee determines the number of court employees needed to serve the court, and it sets those employees' salary. Ind. Code § 33-33-49-15 (2011). Thus, the court already has the power to hire staff to work for the new judges in the new small claims division. Similarly, Indiana Code section 33-33-49-15 (2011) authorizes the Superior Court's executive committee to appoint commissioners and referees as needed. Thus, the Court already has the power to hire commissioners and referees for the small claims division.

#### IV. CONCLUSION

This proposal resolves the problem discussed in *Suesz*, namely that creditors often encounter difficulties when trying to locate their debtors in Marion County. If small claims cases are moved to the Marion County Superior Court, then creditors can file suit in one court, just as they currently do in Indiana's 91 other counties. Otherwise, a creditor will be required to expend resources trying to identify the appropriate township court in which to file suit against a debtor.

After years of studies and deliberation, it is time to implement reforms to ensure that small claims cases in Marion County are treated like small claims cases in other counties. The changes proposed here seek to achieve an end to the controversies associated with the Marion County township courts; to enhance the quality of fair, impartial, and efficient justice provided in small claims cases] and to strengthen the public's confidence in Marion County's management of small claims matters.